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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1955

No. 364

RENNOLD PENDER,

Appellant,

v.

CLARK COUNTY, A MUNICIPAL CORPORATION,

Appellee

ON APPEAL FROM THE SUPREME COURT OF THE STATE OF NEVADA

JURISDICTIONAL STATEMENT

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SUPREME COURT OF THE UNITED STATES

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No.

RENNOLD PENDER,

Appellant

v.

CLARK COUNTY, A MUNICIPAL CORPORATION,

Appellee

ON APPEAL FROM THE SUPREME COURT OF THE STATE OF NEVADA

JURISDICTIONAL STATEMENT

The appellant, pursuant to the United States Supreme Court Rules 13(2) and 15, files this his statement of the basis upon which it is contended that the Supreme Court of the United States has jurisdiction on a direct appeal to review the final judgment of the Supreme Court of Nevada in question and that substantial Federal questions are presented.

Opinions Below

The Eighth Judicial District Court, Clark County, State of Nevada, delivered a written opinion, not officially reported, which granted a motion to dismiss a quiet title suit

sought by the grantee of former owners against the appellee's title acquired through delinquent tax proceedings. A copy of this opinion and the Order of Dismissal are included in Appendix B. The Supreme Court of the State of Nevada thereafter delivered a written opinion officially reported in 279 P. 2d 659; and a copy of this opinion is included in Appendix B. The Supreme Court of the State of Nevada thereafter on March 7, 1955 issued an Order denying appellant's petition for rehearing of the aforesaid opinion; the said Order not having been officially reported, a copy of the said Order is also included in Appendix B.

Jurisdiction

The appeal herein is from a final judgment made and entered by the Supreme Court of the State of Nevada, denying the appellant's petition for rehearing which challenged as repugnant to the due process clause of the Fourteenth Amendment to the Constitution of the United States a prior opinion of the Supreme Court of the State of Nevada interpreting Section 6449, Nevada Compiled Laws 1929; Section 6447, Nevada Compiled Laws 1929; and Section 6440, Nevada Compiled Laws 1929, as amended, Statutes 1931, page 97, in such manner that the appellant was justified to challenge the validity of the statute as interpreted.

The final Order appealed from was made and entered on March 7, 1955. Notice of appeal was filed in the Supreme Court of the State of Nevada on April 20, 1955.

The Supreme Court of the United States has jurisdiction to review by direct appeal the final Order complained of by the provisions of 28 U.S.C. Sec. 1257(2).

The said statute clearly sustains the jurisdiction of the Supreme Court to review this judgment on direct appeal. A decision of a state court applying and enforcing a state

statute of general scope against a particular transaction as to which there was a distinct and timely insistence that, if so applied, the statute was void under the United States Constitution, necessarily affirms the validity of the statute as so applied; and the judgment is therefore reviewable by direct appeal. The inquiry is whether the statute is constitutional as applied and enforced in respect of the situation presented. *Dahnke-Walker Milling Co.* v. *Bondurant,* 257 U. S. 282, 288; *Fiske* v. *Kansas,* 274 U. S. 380, 385; *Wilson* v. *Cooke,* 327 U. S. 474, 480.

Questions Presented

1. Whether Section 6449, Nevada Compiled Laws 1929, is repugnant to the Fourteenth Amendment to the Constitution of the United States, when the said statute is interpreted by the Supreme Court of Nevada to terminate a taxpayer's right to redeem property transferred by the tax officials of the respondent, Clark County, to the respondent, Clark County, for failure to pay taxes despite the omission by the respondent, Clark County, of the statutory notice of the said transfer required by Section 6447, Nevada Compiled Laws 1929, and Section 6440, Nevada Compiled Laws 1929, as amended, Statutes 1931, page 97.

2. Whether Section 6447, Nevada Compiled Laws 1929, is repugnant to the Fourteenth Amendment to the United States Constitution, when the said statute is interpreted by the Supreme Court of Nevada to contain notice requirements which may be dispensed with and ignored by the respondent, Clark County, despite the result that the taxpayer loses his right to redeem his property transferred by the officials of the respondent, Clark County, to the respondent, Clark County, for failure to pay taxes.

3. Whether Section 6440, Nevada Compiled Laws, 1929, as amended, Statutes 1931, page 97, is repugnant to the

Fourteenth Amendment to the United States Constitution, when the said statute is interpreted by the Supreme Court of Nevada to contain notice requirements which may be dispensed with and ignored by the respondent, Clark County, despite the result that the taxpayer loses his right to redeem his property transferred by the officials of the respondent, Clark County, to the respondent, Clark County, for failure to pay taxes.

Statutes Involved

The statutes of the State of Nevada involved herein (set forth in Appendix A) are Section 6449, Nevada Compiled Laws 1929; Section 6447, Nevada Compiled Laws 1929; and Section 6440, Nevada Compiled Laws 1929, as amended, Statutes 1931, page 97.

The Supreme Court of the State of Nevada upheld the validity of the said statutes when applied to the facts presented in this case in response to the appellant's challenge that the said statutes as interpreted in this case were repugnant to the due process clause of the Fourteenth Amendment to the Constitution of the United States.

Statement of the Case

The appellant, Rennold Pender, is the grantee pursuant to a quitclaim deed to certain real property located in Clark County, Nevada. The grantors of the said quitclaim deed to the appellant were the heirs of Mina and Helen Stewart who were alleged to be the owners of the said real property. In 1932, in fact, the property had been assessed to Mina and Helen Stewart. However, the taxes levied for the year 1932 were not paid. The property thereupon was sold and a tax certificate was issued by the County Tax Receiver to the County Treasurer on September 11, 1933. On September 11, 1935, the County Treasurer issued a tax

deed to the appellee, Clark County. Nothing further purporting to affect the title to this property occurred until January 27, 1954, when the appellant acquired a quitclaim deed to the property from the heirs of the Stewart family. This proceeding arises from appellant's action to quiet title to the property.

The complaint alleged that a certain tax certificate and tax deed had been issued to the appellee, Clark County; that the appellee claimed title or interest in the real property described in the complaint by and through the said tax certificate and tax deed, that the said tax certificate and tax deed were void, and that the appellee, Clark County, therefore held the said tax title in trust for the appellant. The complaint prayed that the tax certificate and tax deed be adjudged void and that the cloud thereby created on appellant's title be removed.

The evidence presented by the appellant in support of his complaint showed that the tax deed had been issued to the appellee, Clark County, on September 11, 1935, and that one day short of two years prior thereto, on September 11, 1933, the real property had been sold and a tax certificate had been issued by the Clark County Tax Receiver to the Clark County Treasurer. On the basis of this evidence the appellant contended to the trial court that the tax deed, dated September 11, 1935, had been premature and was therefore invalid on its face.

The appellant also presented evidence that between August 7, 1933 and September 11, 1933, the date of the tax sale, the ex officio tax receiver of Clark County had published a notice of tax sale in the Las Vegas newspaper on one and only one day, namely, August 13, 1934; and on the basis of this evidence appellant contended that the officials of Clark County had failed to comply with Section 6447, Nevada Compiled Laws, 1929, which required that the no-

tice of tax sale be advertised immediately after the first Monday of August of each year, that the property be sold on the second Monday of September next succeeding, and that the notice be published in a newspaper at least once a week until the date of sale.

The appellant presented further evidence that no postcard had been mailed to the taxpayer notifying him of the amount due; and appellant contended that the failure to mail a postcard to the taxpayer failed to comply with Section 6440, Nevada Compiled Laws 1929, as amended, Statutes 1931, page 97.

The appellant presented further evidence as to a number of defects in the tax proceedings culminating in the said sale to the appellee, Clark County, namely, the failure to publish a complete notice of delinquency, the failure to segregate the tax penalties and costs applicable to the assessed properties, and the failure to adequately describe the said real property on the assessment roll and in the subsequent notice of tax sale.

At the conclusion of the appellant's presentation of evidence the appellee, Clark County, moved for a dismissal pursuant to Rule 41, Nevada Rules of Civil Procedure, on the ground that upon the facts and the law the appellant had failed to prove a sufficient case for the court. The trial court granted the appellee's motion to dismiss and its decision in substance held as follows:

(1) That the failure to publish the notice of tax sale once a week between the first Monday of August and the Second Monday of September, as provided for by Section 6447, Nevada Compiled Laws 1929, was a defect in the tax proceeding which was nonjurisdictional in nature and was therefore cured by Section 6449, Nevada Compiled Laws 1929, the court citing in support of its ruling, *Davison* v. *Gowen*, 69 Nev. 273, 249 P. 2d 225;

(2) That the failure to send a postcard to the taxpayer notifying him of the amount due, as provided for by Section 6440, Nevada Compiled Laws 1929, as amended, Statutes 1931, page 97, was immaterial and irrelevant because the 1931 amendment was not in effect at the time of the proceeding in question;

(3) That the other defects and irregularities in the tax proceeding culminating in the tax sale and the issuance of the tax certificate and subsequent tax deed were non jurisdictional in nature and were therefore cured, the court citing *Davison* v. *Gowen, supra;*

(4) That it was unnecessary to rule on the appellant's contention that the tax deed to the appellee, Clark County, was one day premature and therefore invalid on its face because, assuming *arguendo* that appellant's contention was correct, title had been vested by law in the appellee, Clark County, as a result of the lapse of the two-year statutory right of redemption as provided for by Section 6447, Nevada Compiled Laws 1929, as amended, Statutes 1947, page 616.

The appellant appealed to the Supreme Court of Nevada, and the appellant's brief to the Supreme Court of Nevada relied upon precedents of the Supreme Court of Nevada which had held that certain defects and irregularities in tax proceedings culminating in a tax sale were jurisdictional in nature within the meaning of the Nevada curative statute if the defects affected substantial property rights of persons whose property had been taxed. In fact, Section 6449, Nevada Compiled Laws 1929, whose constitutionality is involved in this appeal, expressly contained a saving clause providing that the Nevada statute only cured an irregularity, informality, omission, mistake, etc. "that does not affect the substantial property rights of persons whose property is taxed. . . ." Furthermore, the Supreme Court

of Nevada in *Jackson* v. *Harris,* 64 Nev. 339, 183 P. 2d 161, explicitly relied on this saving clause to show that the Nevada curative statute would never be interpreted to deprive the taxpayer of property rights entitled to protection by due process of law.

The appellant therefore devoted the appeal to a demonstration of the reasons why (1) the issuance of a tax deed one day premature rendered the tax deed invalid on its face and (2) the right of redemption could not be terminated as a matter of law by the mere passage of a two-year period, because the defects in the tax proceedings culminating in the issuance of the said tax deed were defects which could not be cured by Section 6449, Nevada Compiled Laws 1929, if the saving clause referred to hereinabove had effect and if the court intended to follow its prior decision in *Jackson* v. *Harris, supra.*

The appellant had no reason to challenge the constitutionality of Section 6449, Nevada Compiled Laws 1929, or its interpretation, for the appellant relied upon the prior decision of the Supreme Court of Nevada and the clear and explicit saving clause in Section 6449, Nevada Compiled Laws 1929, in anticipation of a ruling of the Supreme Court of Nevada on the nature of the defects in question so as to exclude the defects from the applicability of Section 6449, Nevada Compiled Laws 1929.

The opinion of the Supreme Court of the State of Nevada filed on January 28, 1955 contained a ruling which not only was unanticipated by the appellant, but which inherently provoked the Federal constitutional issue. Like the trial court, the Supreme Court of the State of Nevada found it unnecessary to rule on whether the issuance of a premature tax deed rendered the tax deed void on its face, and the Supreme Court of Nevada further assumed *arguendo* that the tax deed was invalid. Therefore, for the purpose of

this appeal, this question is not in issue and it may be assumed that the appellant's position is correct. Also, like the trial court, the Supreme Court of the State of Nevada relied on the mere passage of two years to terminate the taxpayer's right of redemption and thus vest title in the appellee, Clark County, by operation of law.

In response to the question whether the defects in the tax proceedings culminating in the tax sale and issuance of the tax deed were sufficiently serious to permit a termination of the taxpayer's right of redemption, the Supreme Court of the State of Nevada first dismissed the contentions that the property had been inadequately described on the assessment roll; that the notice of delinquency was incomplete in failing to state the penalty; and that the notice of delinquency failed to segregate taxes, penalties and costs. However, insofar as there had been a failure to publish the notice of tax sale in compliance with Section 6447, Nevada Compiled Laws 1929, and the failure to notify the taxpayer of his tax delinquency, pursuant to Section 6440, Nevada Compiled Laws 1929, as amended, Statutes 1931, page 97, the court held both statutes had been in effect at the time involved and that these contentions would appear to be "more serious," but that the failure to give the required notice was cured simply because no notice whatsoever was necessary in view of the statute which expressly provided exactly when property would be sold for delinquent taxes.

The Supreme Court of the State of Nevada apparently ignored the saving clause in Section 6449, Nevada Compiled Laws 1929, which expressly stated that certain defects were incurable if they affected the substantial property rights of persons whose property was taxed.

It was at this point that the appellant was compelled to resort to the argument that the interpretation of the

state statute by the Supreme Court of Nevada was repugnant to the due process clause of the Fourteenth Amendment to the United States Constitution.

A federal question which first arises as a result of a decision in the court below which could not have been anticipated is timely raised and presented in a petition in that court for reconsideration, for such a petition, even though not acted upon, affords the first opportunity to raise the question. *State of Missouri ex rel. Missouri Ins. Co.* v. *Gehner,* 281 U.S. 313, 320; *Brinkerhoff-Faris Trust & Savings Co.* v. *Hill,* 281 U.S. 673, 677, 678; see also *Herndon* v. *State of Georgia,* 295 U.S. 441.

Therefore appellant immediately filed a petition for rehearing that due process of law within the meaning of the Federal constitution required compliance with the statutory notice requirements affecting the termination of the taxpayer's right to redeem property sold for tax delinquency. The appellee waived the right to file a response to the appellant's petition for rehearing with the Supreme Court of the State of Nevada. On March 7, 1955, the Court entered an order denying the petition for rehearing without opinion.

The Federal Questions Presented Are Substantial

The Supreme Court of the State of Nevada denied the appellant's petition for rehearing, which had been based on the following arguments:

1. That Section 6449, Nevada Compiled Laws 1929, as construed by the said Supreme Court of the State of Nevada, so as to permit the taxpayer's right to redeem property transferred by the tax officials of the appellee, Clark County, to the appellee Clark County, for failure to pay taxes despite the omission by the appellee, Clark County, of notice of said transfer as required by the Nevada

statutes in effect at the time was repugnant to the due process clause of the 14th Amendment to the Constitution of the United States;

2. That Section 6447, Nevada Compiled Laws 1929, as construed by the Supreme Court of Nevada so as to contain notice requirements which may be dispensed with and entirely ignored by the appellee, Clark County, despite the result that the taxpayer loses his right to redeem his property transferred by the officials of the appellee, Clark County, to the appellee, Clark County, for failure to pay taxes was repugnant to the due process clause of the 14th Amendment to the Constitution of the United States.

3. That Section 6440, Nevada Compiled Laws 1929, as amended, Statutes 1931, page 97, as construed by the Supreme Court of the State of Nevada contained notice requirements which may be dispensed with entirely and ignored by appellee Clark County, despite the result that the taxpayer loses his right to redeem his property transferred by the officials of the appellee Clark County, to the appellee, Clark County, for failure to pay taxes, was repugnant to the due process clause of the Fourteenth Amendment to the Constitution of the United tates.

The opinion of the Supreme Court of the State of Nevada, affirming the judgment and order of the Eighth Judicial District Court, Clark County, denying relief in the quiet title suit by the grantee of the former owners against the county's title acquired through delinquent tax proceedings, held that the notice requirements could be entirely dispensed with, because the statutes of the State expressly provided when the property would be sold for delinquent taxes and that provision was sufficient notice without further publication of notice of the time of sale.

It is fundamental that legislation designed to cure irregularities in tax delinquency proceedings may be violative of

the due process clause of the Fourteenth Amendment to the Constitution of the United States if such legislation is interpreted by the highest court of a state to remedy action which was in want of statutory authority. The United States Supreme Court has stated in *Turpin* v. *Lemon*, 187 U.S. 51, 57, quoting from Cooley on Taxation:

> "Curative laws may heal irregularities in action but they cannot cure want of authority to act at all."

Applying this doctrine to the interpretation which the Supreme Court of the State of Nevada has put on the curative statute of Nevada in this case, we are faced with the natural repugnance of courts for forfeitures; and we must therefore recognize that where notice is required to be given by a statute, the requirement is a jurisdictional *sine qua non* and the right of redemption cannot be barred unless the notice was given in strict compliance with the statute. It was clearly held in *Rusch* v. *Duncan Land and Mining Co.*, 211 U.S. 526, that the transferee of land as a result of a tax delinquency proceeding acquires the land subject to the right of redemption provided for by the statutes of the state and subject to whatever notice was required by statute before that right of redemption could be finally cut off.

By ruling that the statutory notice requirements could be completely dispensed with and ignored and that the statutory right of redemption could thus be cut off, the Supreme Court of the State of Nevada has placed a construction on the curative statute of Nevada which conflicts with the concept of due process of law within the meaning of the Fourteenth Amendment to the Constitution of the United States. In short, the Supreme Court of the State of Nevada perverted the curative statute to remedy a total

lack of authority to act at all, namely, to cut off the right of redemption without regard to the statutory notice requirements. The fallacy of the reasoning of the Supreme Court of the State of Nevada becomes apparent upon close examination of the chain of precedents relied on by that court to construe its curative statute in this manner.

The Supreme Court of the State of Nevada relied entirely on the case of *Menteberry* v. *Giachometto,* 51 Nev. 7, 267 Pac. 51, and quoted from that case to the effect that no notice whatsoever was necessary if a statute did not require it because the statute providing for the delinquent tax sale provided public notice of the exact time when the property would be sold.

Turning to *Menteberry* v. *Giachometto, supra,* 51 Nev. at 15, it appears that the Supreme Court of the State of Nevada in that case relied entirely on the language of the Supreme Court of the United States in *Hagar* v. *Reclamation District No. 108,* 111 U. S. 701; and the Supreme Court of the State of Nevada quoted verbatim the following language of the Supreme Court of the United States:

> "The law in prescribing the time when such complaints will be heard, gives the notice required, and the proceedings by which the valuation is determined, though it may be followed, if the tax be not paid, by a sale of the delinquent's property, is due process of law."

The genesis of this erroneous reasoning engaged in by the Supreme Court of the State of Nevada was the misinterpretation of the language of the Supreme Court of the United States in this case of *Hagar* v. *Reclamation District No. 108, supra.* The *Hagar* case involved the right of a taxpayer to receive notice so that he might review an assessment and levy made pursuant to the tax laws. In short,

it was an assessment case; and all the Supreme Court of the United States held was that the taxpayer was charged with notice of the statute pursuant to which the assessment levy and lien for taxes was imposed on the taxpayer's property. The *Hagar* case did not cut off the taxpayer's right of redemption after the tax sale. Indeed, the Supreme Court of the United States made it clear (111 U. S. 714) that under the applicable statutes, personal notice was required to be given to the taxpayer before the property could be sold for delinquent taxes.

It is readily apparent that this analysis of the ruling of the Supreme Court of the United States in *Hagar* v. *Reclamation District No. 108, supra,* destroys the foundation upon which the Supreme Court of the State of Nevada has relied in *Menteberry* v. *Giachometto, supra,* and thereafter in *Pender* v. *Clark County,* the case now before this Court.

It is one thing to assess, levy and impress a lien for taxes on property. This the legislature has the sole power to control. It is a wholly different thing to deprive a person of a right of property for failure to pay taxes. It is at this point that the interest of the state in the exercise of taxing power must be balanced against the individual interest sought to be protected by the due process clause of the 14th Amendment to the Constitution of the United States.

The right of redemption is that last chance which a citizen has to recover his property. *Cooley on Taxes* (4th Ed.), Secs. 1562, 1567-1568. The protection of the right of redemption is as old as the law itself, being found in the Hebraic, Roman and Civil Law. *Leviticus* 25:23-25; *Jones on Mortgages* (8th Ed.), Sec. 8; 4 *Pomeroy's Equity Juris.* (5th Ed.), Secs. 1799 *et seq.* Involved in the right of redemption is the right of inheritance. Therefore, there can be no question that when a right of such stature is to be cut

off, proper notice is a person's due, and notice which is notice in form but a gesture in fact, is not due process within the meaning of the Fourteenth Amendment to the Constitution of the United States.

To be due process the notice must be one that can be reasonably calculated under all the circumstances to apprise interested parties of the pendency of the action and afford them the opportunity to present their objections. *Mullane* v. *Central Hanover Bank & Trust Co.*, 339 U. S. 306. As stated in *Bellingham Bay & British Columbia Railroad Co.* v. *New Whatcom*, 172 U. S. 314, 318:

> "The purpose of notice is to secure to the owner the opportunity to protect his property from the lien of the proposed tax or some part thereof. In order to be effectual it should be so full and clear as to disclose to persons of ordinary intelligence in a general way what is proposed."

It is ludicrous for the Supreme Court of the State of Nevada to contend that the notice requirements of the statutes in effect in Nevada at the time of the delinquency sale could be dispensed with simply because other portions of the law specified the time of such sale. This would require a conclusion that the legislature never intended a portion of its laws to be effective. This conclusion ignores the assurance which the legislature has given the taxpayer that although his property would be sold on a certain day for delinquent taxes, the taxpayer would be given specific notice in order to protect his rights of ownership; it ignores the fact that the legislature has thus induced the taxpayer to rely on additional notice; and it ignores the fact that it is not the tax sale whose validity is involved in this question, but the termination of the right of redemption, for there has been a failure to provide notice either before or after the tax sale.

It is this difference which has been emphasized in 1 *Merrill on Notice,* Sec. 515, pages 501-502, whose pertinent portion stated:

> ". . . It is a necessary constitutent of due process that notification of the sale be given some time ere the owner's rights are foreclosed. *It has been held unnecessary to give notice before the sale but it is essential that it be given before the completion of the proceeding.* A curative statute excusing a failure to notify has been held void. . . ." (Emphasis supplied.)

The exercise of the taxing power is a severe exercise of the power of absolute sovereignty on behalf of the State. However, to divest ownership without notice is the instance where constitutional government approaches most nearly to an unrestrained tyranny. Redemption is the last chance of a citizen to recover his property. More is involved here than the rights of the parties litigant. The public has an important stake in the outcome.

Conclusion

Therefore, it is respectfully submitted that this Court has jurisdiciton of this appeal under 28 U. S. C. Sec. 1257(2) and that Federal questions are presented which are substantial and of public importance.

Respectfuly submitted,

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APPENDIX A

Sec. 6449, Nevada Compiled Laws 1929 (as it existed in 1933), in its pertinent part, reads as follows:

"If the property is not redeemed within the time allowed by law for its redemption, the treasurer, or his successor in office, must make to the purchaser, or his assignee, a deed of the property, reciting in the deed substantially the matters contained in the certificate of sale, and that no person has redeemed the property during the time allowed for its redemption. The treasurer shall be allowed a fee of three dollars for making such deed, which, together with the cost of acknowledging the same, shall be paid by the purchaser; provided, that when the deed is made to the county as the purchaser the treasurer shall make the deed and the county clerk shall take the acknowledgment without charge; provided, further, that such deeds hereafter issued shall be recorded in the office of the county recorder within thirty days from the date of expiration of the period of redemption. If not so recorded, such deeds, and all proceedings relating thereto from and including the assessment, shall be void as against any subsequent purchaser in good faith and for a valuable consideration of the same real estate or any portion thereof, where the latter conveyance shall be first duly recorded. All such deeds, whether heretofore or hereafter issued, are primary evidence that the property was assessed as required by law; that the property was equalized as required by law; that the taxes were levied in accordance with law; that the taxes were not paid; that at a proper time and place the property was sold as prescribed by law, and by the proper officer; that the property was not redeemed;

that the person who executed the deed was the proper officer; that where the real estate was sold to pay taxes on personal property, the real estate belonged to the person liable to pay the tax; and are (except as against actual fraud) conclusive evidence of the regularity of all other proceedings, from the assessment by the assessor, inclusive, up to the execution of the deed. Such deed conveys to the purchaser the absolute title to the property described therein, free of all incumbrances, except when the land is owned by the United States, or this state, in which case it is prima-facie evidence of the right of possession, accrued as of the date of the deed to the purchaser. No tax heretofore or hereafter assessed upon any property, or sale therefor, shall be held invalid by any court of this state on account of any irregularity in any assessment, or on account of any assessment or tax roll not having been made or proceeding had within the time required by law, or on account of any other irregularity, informality, omission, mistake or want of any matter of form or substance in any proceedings which the legislature might have dispensed with in the first place if it had seen fit so to do, and that does not affect the substantial rights of persons whose property is taxed; and all such proceedings in assessing and levying taxes, and in the sale and conveyance therefor, shall be presumed by all the courts of this state to be legal until the contrary is affirmatively shown. No action or counterclaim for the recovery of lands sold for taxes shall lie unless the same be brought or interposed within three years after the execution and delivery of the deed therefor by the treasurer, any law to the contrary notwithstanding."

Section 6447, Nevada Compiled Laws 1929 (as it existed in 1933), in its pertinent part, reads as follows:

"Immediately after the second Monday in June of each year, the county treasurer and ex officio tax receiver shall advertise the property upon which delinquent taxes are a lien for sale, in all cases where the delinquent tax, exclusive of poll taxes and penalties, does not exceed the sum of three hundred ($300) dollars, such sale to be made at the front door of the courthouse on the third Monday in July next succeeding. Such notice shall be published in a newspaper, if there be one in the county, at least once a week from the date thereof until the time of sale, and if there be no newspaper in the county, such notice shall be posted in at least five conspicuous places within the county; provided, that the cost of publication in each case shall be charged to the delinquent taxpayer, and shall, in no case, be a charge against the state or county; and provided further, that such publication shall be made at not more than legal rates; provided, that in all cases where the delinquent property consists of unimproved real estate assessed at not to exceed twenty-five dollars, the publication required by this section shall be given by the county tax receiver posting a copy of such delinquency in at least five conspicuous places within the county. Such notice shall be posted or published at least twenty-five days prior to the date of sale, and shall specify and give:

"First. The name of the owner, if known.

"Second. The description of the property on which such taxes are a lien and which will be sold for the payment thereof.

"Third. The amount of the taxes due from him, and the penalties and costs as provided by law.

"Fourth. That said property will be sold for all of said taxes, penalties, and costs, specifying the time and place of said sale, and that such sale is subject to redemption within one year after the date of sale by payment of said taxes, penalties and costs, together with three (3%) per cent per month thereon from date of sale until paid; provided, that such redemption may be made in accordance with the provisions of the civil practice act of this state in regard to real property sold under execution. Bidding at tax sales under the provisions of this section shall be for the smallest quantity of property that will pay the taxes, penalties and costs."

Section 6440, Nevada Compiled Laws, 1929, as amended, Statutes 1931, page 97 (as it existed in 1933), in its pertinent part, reads as follows:

"Upon receiving the assessment roll from the auditor, the ex officio tax receiver shall proceed to receive taxes, and shall forthwith give notice, by publication in some newspaper published in his county, and if none be so published, then by posting notices in three public and conspicuous places in the county, that taxes will be delinquent on the first Monday in December, and if any person charged with taxes which are a lien on real estate, according to existing law, shall fail to pay one-half of said taxes prior thereto, then the entire tax shall become due, and a penalty of ten (10%) per cent will be added to the amount thereof; and the tax receiver shall forward by mail a post card to each taxpayer, if the post-office address of such taxpayer is known to him, notifying him of the amount due."

APPENDIX B

IN THE SUPREME COURT OF THE STATE OF NEVADA

No. 3818

[Filed January 28, 1955]

RENNOLD PENDER, *Appellant*,

v.

CLARK COUNTY, a Municipal Corporation, *Respondent*

Appeal from Eighth Judicial District Court, Clark County; Frank McNamee, Judge, Department No. 1, Denying Relief in Quiet Title Suit Sought by Grantee of Former Owners Against County's Title Acquired Through Delinquent Tax Proceedings

Judgment and Order Denying New Trial Affirmed

Hawkins & Cannon, of Las Vegas, and Milton V. Backman, of Salt Lake City, Utah, for Appellant.

Roger D. Foley, District Attorney, Las Vegas, for Respondent.

OPINION

By the Court, BADT, *J.*:

This appeal grows out of the sale to Clark County by the officials of Clark County of certain parcels of land for nonpayment of taxes. We are presented first with the question as to whether a number of defects in the tax proceedings culminating in a sale to the county and the issuance of a certificate of such sale were cured by our curative statute. There is next involved the effect of the execution of tax deed to the county one day before ex-

piration of the period of redemption. A third question involves the determination of the legal position of the plaintiff who purchased a quit claim deed of the property from the original owners some nineteen years after the execution and delivery of such deed and seeks a decree quieting title by reason thereof.

We hold that the defects in the tax proceedings asserted by plaintiff were not jurisdictional and were cured by the curative provisions of our statute; that, assuming the tax deed to be void by reason of its premature execution, such situation cannot profit the plaintiff.

The facts are simple. For the year 1931 the property in question was assessed to one W. J. Stewart and the taxes paid. In the following year, 1932, it was assessed to Mina and Helen Stewart. The taxes being delinquent and unpaid for that year, the property was sold and a tax certificate issued by the county tax receiver to the county treasurer on September 11, 1933. Helen and Mina Stewart in 1932 had caused the county tax receiver to segregate the property in question from other property assessed to them, and paid the taxes on the other property while permitting the taxes on the questioned property to go delinquent. The owners neither directly nor indirectly made any attempt to redeem the property from the tax sale, and it does not appear that they were in possession or occupancy of any portion of the land involved. On September 11, 1935, one day before the expiration of two years from the issuance of the tax certificate, and thus one day prior to the time in which the property could have been redeemed under the statute, the county treasurer executed his tax deed to the defendant Clark County. On January 27, 1954, over twenty years after the tax sale and over eighteen years after the tax deed, plaintiff obtained a quit claim deed to the property. On the same day he made a tender to the county treasurer of Clark

County, which we may assume to have been an offer to pay the delinquent taxes, interest and penalties. On the following day he commenced the present action.

In the course of the proceedings leading up to the tax sale of September 11, 1933, there was a failure in several respects to comply with statutory requirements. Appellant lists five assignments of error, each growing out of the court's ruling that such failure was cured by the curative provisions of the statute hereinafter quoted. These assignments are as follows, the statutory provisions mentioned being those in effect at the time:

1. Section 6447, N. C. L. 1929, required that notice of tax sale be advertised immediately after the first Monday of August of each year, that the property be sold on the second Monday in September next succeeding, and that the notice be published in a newspaper at least once a week until the date of sale. Contrary to such direction, the notice of sale in the instant case was published only once, namely, on August 13, 1933.

2. The property was described in the assessment and in the notice of sale by lots and blocks of its subdivision, whereas prior thereto the city council had vacated a portion of the subdivision and restored the property to acreage.

3. The notice of delinquency demanding payment before December 5, 1932 advised that a penalty of 15 percent would be added, whereas the amendment of sec. 6440, N. C. L. 1929, then in effect, Stats. 1931, p. 97, fixed a penalty of 10 percent.

4. The notice did not segregate the taxes, penalties and costs, whereas the said statute then in effect required the notice to specify the amount of taxes due from the taxpayer, "and the penalties and costs as provided by law."

5. Section 6440, N. C. L. 1929, as amended, Stats. 1931, p. 97, required: "* * * the tax receiver shall forward

by mail a post card to each taxpayer * * * notifying him of the amount due." No such post card was mailed. The mailing requirement was repealed by Stats. 1933, but the 1931 requirements governed official action at the time.

The county insists that none of the defects is jurisdictional or affected any fundamental rights of the plaintiff, and that all of them are cured by the provisions of sec. 6449, N. C. L. 1929. The relevant portion of sec. 6449 (subsequent amendments to the section do not affect the present situation) reads as follows: "No tax heretofore or hereafter assessed upon any property, or sale therefor, shall be held invalid by any court of this state on account of any irregularity in any assessment, or on account of any assessment or tax roll not having been made or proceeding had within the time required by law, or on account of any other irregularity, informality, omission, mistake or want of any matter of form or substance in any proceeding which the legislature might have dispensed with in the first place if it had seen fit so to do, and that does not affect the substantial property rights of persons whose property is taxed; * * *."

We are of the opinion that assignments 2, 3 and 4 are clearly within the operation of the statute quoted. Menteberry v. Giacometto, 51 Nev. 7, 267 P. 49; Davison v. Gowen, 69 Nev. 273, 249 P. 2d 225; Haskins v. Roseberry, 9th Cir., 119 F. 2d 803; Williams v. Board of Supervisors, 122 U. S. 154, 30 L. Ed. 1088; Longyear v. Toolan, 209 U. S. 414, 28 S. Ct. 506, 52 L. Ed. 859; Hagar v. Reclamation District, 111 U. S. 701, 4 S. Ct. 663, 28 L. Ed. 569.

Assignments 1 and 5, the failure to give the required statutory notice of sale would appear to be more serious, but that they were cured by the provisions of the statute was the holding of this court in Menteberry v. Giacometto, supra. The language of that case, in which the notice of sale clearly failed to comply with the statute, is conclusive. This

court there said: "The sale under the notice which was given *is confirmed* by the language of the statute just mentioned * * *. As a matter of fact, no notice whatever was necessary did not a statute require it. But *our statute* expressly provides exactly when property shall be sold for delinquent taxes. Such a provision is sufficient notice without further publication of notice of the time of sale." (Emphasis supplied.)

Appellant insists that his assignment No. 2 is well taken by reason of the decision of this court in Jackson v. Harris, 64 Nev. 339, 183 P. 2d 161, but the facts with reference to the description do not even approach similarity. The description given in the notice in the instant case, by lots and blocks of the subdivision, was a complete description and identification of the property. The mere fact that, upon petition of the owner, the city council had the year before restored a portion of the property to acreage did not affect the accuracy of the description. Thus Jackson v. Harris becomes wholly inapplicable.

In addition to the foregoing five assignments of error, appellant argues at length that it was error to hold that the plaintiff's cause of action was barred by what is generally referred to as "the short statute of limitations." This is found in the last sentence of sec. 6449, N. C. L. 1929, part of which we heretofore quoted. The sentence is as follows: "No action or counter claim for the recovery of lands sold for taxes shall lie unless the same be brought or interposed within three years after the execution and delivery of the deed therefor by the treasurer, any law to the contrary notwithstanding." Appellant cites many authorities to the general effect that such statute begins to run from the date of the tax deed, and that a premature tax deed is void and does not start the statute running. For the purpose of this opinion we may assume, without

so deciding, that the tax deed was void by the reason of its premature issue on September 11, 1935, one day prior to the expiration of the two-year statutory period of redemption; and we may assume further, for the sake of argument, that plaintiff's action was therefore not barred by such statute despite the fact that it was commenced over eighteen years after the execution of the tax deed. It is unnecessary to decide these points because, having held that the errors in the tax proceedings were cured by the curative portions of the section it necessarily follows that the tax sale could not be held invalid by reason thereof. The period of redemption would therefore commence to run from that date as provided by law. Upon expiration of that period, title vested in the county by operation of law. The corresponding portion of sec. 6448, N. C. L. 1929, in effect at the time of the proceedings here involved, read: "If it is not redeemed the title thereto shall vest in the county for the benefit of the county and state and may be disposed of as provided by law." And sec. 6449 provides: "If the property is not redeemed within the time allowed by law for its redemption, the treasurer * * * must make to the purchaser * * * a deed of the property * * *." As this court said in Lyon County v. Ross, 24 Nev. 102: "The county became the legal owner thereof, at the time the right of redemption expired, for the benefit of the county and state, under the express provision of said section 40." The failure of the county to obtain the tax deed in no way detracted from its right thereto or to the title which vested by operation of law; nor did the failure to execute the tax deed on or after September 12, 1935 vest any new rights in the plaintiff. The respondent county unquestionably had the right to demand its tax deed from the county treasurer upon the latter's failure to execute and deliver the same after expiration of the period of redemption, in failure of such redemp-

tion, and could have enforced such right by mandamus. The execution of the tax deed was not indispensable to the vesting of title. Buman v. Sturn, 73 N. D. 561, 16 N. W. 2d 837. The failure of the owner to exercise the right of redemption within the time prescribed by law left him in no position to attack the prematurely issued deed. Buman v. Sturn, supra; De Baca v. Perea, 52 N. M. 418, 200 P. 2d 715.

The learned trial judge correctly recited the foregoing principles of law and ruled accordingly. He said in part: "• • • the equitable right which the Stewarts had for the two years period immediately following September 11, 1933 vanished by operation of the law upon the expiration of said period, and likewise by operation of law the legal title thereupon vested immediately in the County. N. C. L. 6448. The giving of a tax deed thereafter to the county is a mere ministerial act creating only an indicium of title."

This case and other cases reaching this court, as well as cases that became final in the district courts without appeal, bring to light the failure of county tax officials year after year to follow the clear directions of the statutes, and the foregoing opinion is not intended to condone or to place the stamp of this court's approval upon such failure. Our curative statute, while held by this court in Menteberry v. Giacometto, supra, to be reasonable, fair and proper, should not be considered an invitation by the legislature to county officials to ignore at will directions as to the manner of assessment and collection of taxes and the enforcement thereof by sale of the property. That such failures serve only to breed litigation is evidenced by the instant case.

The judgment and order denying new trial are affirmed with costs.

Merrill, C. J., and Eather, J. concur.
Attest: A full, true and correct copy.

ANNA LEGARZA,
Official Reporter.

Filed January 28, 1955.
NED A. TURNER,
Clerk of Supreme Court.

NOTE. These printed advance opinions are mailed out immediately as a service to members of the bench and bar. They are subject to modification or withdrawal possibly resulting from petitions for rehearing. Any such action taken by the court will be noted on subsequent advance sheets.

NED A. TURNER,
Clerk.

IN THE SUPREME COURT OF THE STATE OF NEVADA

No. 3818

RENNOLD PENDER, *Appellant,*

vs.

CLARK COUNTY, a Municipal Corporation, *Respondent*

Hawkins & Cannon, of Las Vegas; Milton V. Backman, of Salt Lake City, for Appellant.

George M. Dickerson, District Attorney, Las Vegas, for Respondent.

ORDER DENYING PETITION FOR REHEARING

Per CURIAM:

Rehearing denied.

Dated March 7, 1955.

MERRILL,
C. J.;

BADT,
J.;

EATHER,
J.

Attest: This is a full true and correct copy.

ANNA LEGARZA,
Official Reporter.

IN THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA, IN AND FOR THE COUNTY OF CLARK

Case No. 64979

Dept. No. I

RENNOLD PENDER, *Plaintiff*

vs.

CLARK COUNTY, a Municipal Corporation, *Defendant*

DECISION ON MOTION TO DISMISS

Plaintiff invokes the equity jurisdiction of this Court by seeking to quiet title to the land described in his complaint as against any interest claimed by Clark County therein.

The property historically belonged to the Stewart family and taxes thereon were paid until those taxes levied for the year 1932. No taxes were paid for the year 1932 or thereafter. The property was thereupon sold and a tax certificate was issued to the County as purchaser, on September 11, 1933. On September 11, 1935 the County Treasurer issued a tax deed to the County.

Nothing further purporting to affect title to the property accrued until January 27, 1954 when plaintiff acquired a quit-claim deed to the property from certain Stewart heirs.

Plaintiff contends that there were numerous errors in the sale of this property, which, taken altogether, become jurisdictional thereby preventing the County from acquiring any title.

Specific errors and irregularities in its assessment, and in the sale and deeding of this property to the county were shown by the evidence produced at the trial on behalf of the plaintiff.

Only one is worthy of comment. The others are all non-jursidictional and therefore immaterial under the issues herein presented. *Davison* v. *Gowen*, 249 P. 2d, 225, 69 Nev. 273.

Plaintiff claims that the deed to the County was one day premature; that, therefore, it was a nullity and that no title ever passed to the County by reason of this void deed.

For the purpose of the analysis to follow, we adopt plaintiff's premise that the deed to the county was premature by one day, and, therefore, a nullity. His conclusion that no title ever passed to the County does not necessarily follow, however.

When a person becomes the buyer of land at tax sale, he acqires an equitable title which in equity is paramount to the assessed owner's title, except for one thing. The law provides that the property is subject to redemption by the assessed owner or his successor in interest within two years after the date of sale, by payment of the delinquent taxes, penalties, costs and interest.

The rights of the parties before and after a tax sale, therefore, are as follows:

On the day on which the taxes are levied in each year, the county acquires a legal lien against the property for the amount of the taxes. N.C.L. 6416.

When taxes become delinquent and the property is sold to satisfy said lien, the purchaser receives an equitable title to the property. This equitable title consists of a *right* enforcible in equity to have the legal title conveyed by the County to him if no redemption is made within two years from the date of sale.

The assessed owner, after the tax sale, still holds bare legal title to the property, and has also a right in equity to regain equitable title if he redeems the property in the

manner and within the time prescribed by law. This equitable right of the assessed owner has a life of only two years. N.C.L. 6447. (As amended, 1947 Statutes of Nevada, p. 616.)

Applying the foregoing principles to the facts of this case, and still relying on plaintiff's premise that the tax deed is a nullity, we have the following situation:

Clark County obtained a legal lien against the property in dispute when the tax levy for the year 1932 was made.

When the taxes for that year became delinquent because of non-payment, and the County sold the property, the Stewart heirs, while retaining bare legal title to the property, had only one enforcible right, to wit, the equitable right to redeem the property within two years. On the other hand, the purchaser at the tax sale (in this case the County) gained the equitable right to have the legal title conveyed to it in the event redemption was not made within two years. Chapter 296, p. 420, 1953 Statutes of Nevada provides a means, in addition to any court action, for enforcing this right.

There is no evidence to show that the assessed owner or owners or any successor in interest thereto exercised or attempted to exercise the said right of redemption within said two year period or at all (except possibly in January, 1954, immediately before this action was commenced). Consequently, the equitable right which the Stewarts had for the two years period immediately following September 11, 1933 vanished by operation of the law upon the expiration of said period, and likewise by operation of law the legal title thereupon vested immediately in the County. N.C.L. 6448. The giving of a tax deed thereafter to the county is a mere ministerial act creating only an indicium of title. Thereafter, any attempted conveyance of this property or any right therein by the Stewarts through quit claim deed or

otherwise, created no rights in the grantee, who would receive only what rights the grantor had to convey, which in this instance were none.

The plaintiff or his predecessor in interest was not prejudiced by a premature tax deed to the County (*Price* v. *Brimacombe,* 72 P. 2d, 1107, 58 Nev. 156). If such deed was a nullity, it in no way affected the rights of his predecessors which rights were terminated, not by such void deed, but by the expiration of their period of limited existence.

Defendant's motion to dismiss, under Rule 41-b, N.R.C.P. on the ground that upon the facts and the law the plaintiff has failed to prove a sufficient case for the court, must be granted.

An appropriate order will be entered.

The Court suggests that counsel consider whether any action under Chapter 296, Page 470 of the 1953 Statutes of Nevada would not be appropriate to acquire written indicia of the title already vested in the County with respect to the property which is the subject of this suit.

Dated April 13th, 1954.

——— ———,

District Judge.

IN THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA, IN AND FOR THE COUNTY OF CLARK

Case No. 64979

Dept. No. 1

RENNOLD PENDER, *Plaintiff*,

vs.

CLARK COUNTY, a Political Subdivision of the State of Nevada, *Defendant*

ORDER OF DISMISSAL

This case coming on for trial before the above entitled Court without a jury on the 10th day of March, 1954, upon the Complaint of Plaintiff and the Answer of Defendant, and Plaintiff having introduced his evidence and rested, and Defendant, without having waived its right to offer evidence, having moved for dismissal pursuant to Rule 41(b) NRCP, upon the grounds that upon the facts and the law Plaintiff had failed to prove a sufficient case to the Court, and the Court having ordered the submission of the matter on briefs and the matter having been so submitted,

It is, therefore, ordered, adjudged and decreed that upon the facts and the law the Plaintiff having failed to prove a sufficient case before the Court, the Motion of the Defendant for Dismissal is hereby granted.

Dated this 13th day of April, 1954.

——— ———,
District Judge.

(3527-9)

No. 364. PENDER *v.* CLARK COUNTY. Appeal from the Supreme Court of Nevada. *Per Curiam:* The appeal is dismissed for want of a substantial federal question. *Charles S. Rhyne* and *Eugene F. Mullin, Jr.* for appellant. *Edmund D. Campbell* for appellee. Reported below: 71 Nev. 47, 279 P. 2d 659.